REMARKS

Claims 1-32 are pending in the application.

Claims 1-32 have been rejected.

Claim 1, 11, 15, 22, and 24 have been amended, and reconsideration is respectfully requested.

I. REJECTIONS UNDER 35 U.S.C. § 103

Claims 1-5, 8-9, 12-16, 18, 20-22, 25-28 and 30-32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Adams (US Patent 6,154,730) in view of Hertel-Szabadi (US Patent Application Publication 2003/0233267) and in further view of Christianitytoday.com. Claims 6-7, 10, 17 and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Adams (US Patent 6,154,730) in view of Hertel-Szabadi (US Patent Application Publication 2003/0233267), in further view of Christianitytoday.com, and in further view of Eliott (US Patent 6,446,053). Claims 11, 19 and 29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Adams (US Patent 6,154,730) in view of Hertel-Szabadi (US Patent Application Publication 2003/0233267), in further view of Christianitytoday.com, in further view of Eliott (US Patent 6,446,053) and in further view of Wakelam (US Patent 6,859,768). The rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to

deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142.

Claims 1, 15, 22, and 24 are amended above to include the element "allowing a user to place a constraint on data used to generate a schedule," a limitation previously found in dependent claim 11. Applicant maintains that Adam, Hertzel-Szabadi, Christianitytoday.com, Eliot, and Wakelam, either individually or in combination, don't disclose, teach, suggest any desire, necessity or, importance for generating a schedule of the construction projects (for facilities within the complex) using a determined revenue, costs of the stadium, and a constraint.

The Office in the Office Action dated September 6, 2007 and in the prior Office Actions dated January 16, 2007, October 31, 2006, and February 13, 2006 respectively concedes that "Adams et al. do not disclose allowing a user to place a constraint used to generate the schedule; and showing the user in real time how at least one change in the altered data and constraint affects the schedule." The Office also concedes that "Wakelam et al. disclose that the Interview massing element 102 gathers some basic information regarding the project and allows the user to change some high-level parameters of the building design and then controls the assembly hierarchy to produce a full-scale, three-dimension model of the building, complete with drawings, specifications cost estimate and schedule." The office actions then argue that claims 11, 19, and 29 would be obvious if the Adams et al. is modified to include the feature of Wakelam et al. However, the office actions failed to note a critical difference between the constraint the Applicant cited and the constraints Wakelam et al. cited.

The constraint of claim 1, 15, 22, and 24 as amended above refers to the financial and strategic conditions that may affect the project schedule, as illustrated in FIG. 1. For example, the example of the constraint Applicant cited is a "maximum amount of debt that a church is willing to endure during the construction of the church building" (paragraph 0027). On the other hand, the constraints that Wakelam et al. cited clearly refer to "some high level elements of the building design" (Col. 13, line 45-47) that affect the three-dimension model of the building. Therefore, the constraints cited by Applicant are not the same as, or even similar to, the constraints cited by Wakelam et al.

In particular, claim 1 requires allowing a user to place a constraint on data used to generate a schedule. To the extent that Wakelam et al. discusses a constraint all, it is clearly not a constraint on data used to generate the schedule, as in claims 1, 15, 22, and 24, as amended. As no art of record teaches or suggests this limitation, no combination of the references can teach or suggest the limitation.

Accordingly, the Applicant respectfully requests withdrawal of the 103 rejections of Claims 1-32.

Applicant also respectfully notes that the limitations added to each of the independent claims come directly from the respective dependent claims. As such, these limitations have already been fully considered, searched, and examined. Entry of these amendments is respectfully requested as they can not require any further search or consideration.

CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at ***wmunck@munckbutrus.com***.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Munck Butrus Deposit Account No. 50-0208.

Respectfully submitted,

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